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## GENERAL COUNSEL'S OPINION NUMBER 58-4, DATED 28 JULY 1958

Where a separation allowance is granted an employee by an Authorizing officer based on a reasonable and bona fide determination that the situation will require separation for 90 days or more, the fact that the dependents are allowed to join him less than 90 days after the grant because of termination of conditions requiring the separation, will not require the employee to refund amounts received under the grant.

TO CHIEF, CONTRACT PERSONNEL DIVISION

1. You have requested our opinion as to whether an employee, granted a separation allowance in accordance with section 260 of the Standardized Regulations (Government Civilian, Foreign Areas), whose dependents are subsequently allowed to join him because of the termination of the conditions requiring separation, and who join him less than 90 days after the grant, must refund the amounts he received under the grant.

2. Separation allowances are granted Agency employees under authority of the CIA Act, section 4(b), [formerly section 5] and Executive Order 10100, and must conform to the Standardized Regulations. We must therefore look to the Standardized Regulations for authority to make a grant of less than 90 days.

3. Paragraph 262.32 of these Regulations reads as follows:

"A separation allowance shall not be granted where the condition which meets any of the requirements of section 262.1 appears to require separation for a period of less than 90 consecutive calendar days. After expiration of the 90-day period a grant previously disapproved under this section may be made for the entire period of separation (subject to the provisions of section 264.1) if the condition necessitating separation continued for a longer period."

The problem is, then, whether the words "appears to require" mean that the entire paragraph is to be read as a condition precedent or whether the paragraph means any grant for less than 90 days is void ab initio. We think it is a condition precedent. Where the situation requiring separation truly appears to require it for 90 days or more but by happenstance turns out not to, we think the condition of paragraph 262.32 has been met.

4. A word of caution: The word "appears" is to be taken to mean "appears to the official approving the grant," and this appearance must be reasonable and in good faith. Therefore, grants which may turn out to be for less than 90 days should be subjected to close scrutiny, both before and after the fact, in order to prevent abuse.

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5. In our memorandum of 1 August 1957 to the Chief, Finance Division; subject - Separation Allowance, we stated: "Under section 262.32 . . . , separation allowance is not to be paid when the period of separation is less than 90 days." To the extent that the opinion stated in that memorandum is inconsistent with the above (with respect to grants approved before the termination of the period of separation), it is modified.

6. You have also posed the question whether the granting of a Separation Allowance "for the convenience of the Government" as set forth in section 262.1 of the Standardized Regulations constitutes an administrative decision to be made by the Director of Personnel or his designee based on such evidence as he deems material and relevant to establish the fact that the separation is "for the convenience of the Government." We view the expression "for the convenience of the Government" as a mere descriptive headline. The actual substance of the provision (subparagraph d) follows this expression. Read in conjunction with the preamble of paragraph 262.1, subparagraphs d(1) and (2) clearly convey the thought that the existence of the conditions warranting the separation is to be determined administratively. An officer delegated authority to approve allowances may make the determination on the basis of whatever considerations he chooses to entertain, so long as he is not arbitrary or capricious and does not otherwise abuse his discretion. You will note that subparagraph d(2) provides very great latitude for a determination that a separation is "in the interest of the Government."

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